



Social Security Tribunal of Canada      Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *S. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 223

Tribunal File Number: AD-17-358

BETWEEN:

**S. L.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 5, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The Social Security Tribunal of Canada (Tribunal) grants leave to appeal before the Appeal Division.

### **INTRODUCTION**

[2] On March 31, 2017, the Tribunal's General Division found that the Applicant had voluntarily left her employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[3] The Applicant is deemed to have filed an application for leave to appeal to the Appeal Division on April 28, 2017.

### **ISSUE**

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

### **THE LAW**

[5] As provided for in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), "An appeal to the Appeal Division may be brought only if leave to appeal is granted," and "The Appeal Division must either grant or refuse leave to appeal."

[6] Subsection 58(2) of the DESD Act provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

### **ANALYSIS**

[7] According to subsection 58(1) of DESD Act the only grounds of appeal are that:

- a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is an initial hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the abovementioned grounds of appeal gives the appeal a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact or jurisdiction, the answer to which could lead to the setting aside of the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant, in her application for leave to appeal, argues that the General Division did not consider an important fact to base its decision on the issue of voluntary leaving. She argues that the General Division ignored the fact that she had no chance of having a position, because a position had to be proposed only to agency individuals whose position had been abolished. She therefore closed the docket with the employer for that reason. The General Division therefore allegedly committed an error by determining that a reasonable solution would have been to stay on the employer's callback list.

[13] After reviewing the appeal docket, the General Division's decision and the Applicant's arguments in support of her application for leave to appeal, the Tribunal determines that the appeal has a reasonable chance of success. The Applicant has raised a question the answer to which could lead to the setting aside of the decision under review.

## **CONCLUSION**

[14] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division